



**The Centre**  
Canadian Centre to  
End Human Trafficking.

## **Written Brief on Study on Coercive Behaviour Legislation**

Submitted by The Canadian Centre to End Human Trafficking  
June 2024

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## CHALLENGES WITH COERCIVE CONTROL LAWS

The federal government should seek to avoid repeating the mistakes of existing human trafficking laws and coercive control legislation. Upon review, these current laws make it difficult to prosecute cases due to three factors:

1. overreliance on victim testimony
2. insufficient judicial training, and;
3. issues around the lack of “physical” evidence.

Similar to Canada’s human trafficking laws, coercive control legislation in other jurisdictions place undue burden on survivors to prove their case.<sup>1</sup> By testifying, victims must recount their traumatic experiences and confront their traffickers/abusers in a public setting. Often, they may be reluctant to share details due to fear, shame or difficulty recalling traumatic events. In her 2022 book, *Coercive Control and the Criminal Law*, Cassandra Weiner stated that “If [the victim] cannot perform [on the stand], the prosecution falls at the first hurdle. But if she performs too well, juries mistrust her.” (Weiner 2022). These and other findings suggest that the prosecutorial process itself is a source of trauma, and acts as a disincentive for seeking justice.

Within this context, it is unsurprising that these current laws have rarely led to successful convictions. A 2019 Statistics Canada report found that “less than one in ten (7%) [human trafficking] charges resulted in a guilty finding.”<sup>2</sup> The vast majority of charges are stayed, withdrawn or dismissed entirely.<sup>3</sup>

The same is true with coercive control laws introduced in recent years.

A 2023 UK report found that only 3.7% of coercive behaviour cases resulted in a charge and over half (53.9%) were dropped, often due to survivors deciding not to pursue the charges.<sup>4</sup> UK authorities also found it challenging to collect evidence on coercive control, a crime that is often

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<sup>1</sup> Hayli Millar and Tamara O’Doherty. (June 29, 2020). *Canadian Human Trafficking Prosecutions and Principles of Fundamental Justice: A Contradiction in Terms?* The International Centre for Criminal Law Reform and Criminal Justice Policy. Retrieved on May 30, 2024 from <https://icclr.org/publications/canadian-human-trafficking-prosecutions-and-principles-of-fundamental-justice-a-contradiction-in-terms/>, 69.

<sup>2</sup> Dyna Ibrahim, (May 4, 2021). *Trafficking in persons in Canada, 2019*. Statistics Canada. Retrieved on June 1, 2024 from: <https://www150.statcan.gc.ca/n1/pub/85-005-x/2021001/article/00001-eng.htm>

<sup>3</sup> Ibid.

<sup>4</sup> Home Office. (April 4, 2023). *Controlling or Coercive Behaviour: Statutory Guidance Framework*. Government of the United Kingdom. Retrieved on June 1, 2024: [https://assets.publishing.service.gov.uk/media/642d3f9e7de82b001231364d/Controlling\\_or\\_Coercive\\_Behaviour\\_Statutory\\_Guidance\\_-\\_final.pdf](https://assets.publishing.service.gov.uk/media/642d3f9e7de82b001231364d/Controlling_or_Coercive_Behaviour_Statutory_Guidance_-_final.pdf), page 24



## The Centre

Canadian Centre to  
End Human Trafficking.

perpetrated by emotional and psychological tactics.<sup>5</sup> The evidentiary threshold is so challenging that some reports have found that police are no longer prioritizing coercive control charges.<sup>6</sup>

The pressure on victims is, in part, due to the lack of training for judges. A review by Dr. Jane Wangmann found that judges often use “stereotypical notions” to assess victims’ behaviour and how they perform in the courtroom.<sup>7</sup> The prevalence of stereotypical thinking and lack of training has been identified as a major hurdle in California: “Nearly a year after the [coercive control] law was enacted, Pallavi Dhawan, director of domestic violence policy at the Los Angeles City Attorney’s office, the main sponsor of the bill, wrote to the [California Judicial Council] expressing her concern over whether family court judges were qualified to do their jobs.”<sup>8</sup> The absence of appropriate and regular training means that judges do not have the knowledge to appreciate how trauma can impact victims and their stories.

Another challenge often cited police is the difficulty of collecting physical evidence in coercive control cases. This lack of “physical” evidence often leads to cases being dismissed.

Yet, there are other opportunities.

Digital evidence can help prove the relationship between the victim and accused in the absence of victim testimony. When the Crown has overwhelming evidence of someone’s role in a crime, the offender is much more likely to accept a plea deal.<sup>9</sup> Finding ways to reduce the overreliance on physical evidence and victim testimony is therefore a pressing priority.

## RECOMMENDATIONS FOR COERCIVE CONTROL LAWS IN CANADA

### 1. Work with stakeholders to implement system change to update attitudes, cultures and accountability mechanisms to support survivors.

Creating laws to address coercive control without systemic reform creates conditions for additional harm. Reform must go beyond education and training. It requires cultural change and accountability.

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<sup>5</sup> Lisa Ha (May 13, 2024). *Brief overview of coercive control and the criminal law*. Government of Canada. Retrieved on June 4, 2024: [https://www.justice.gc.ca/eng/rp-pr/cj-ip/victim/rd17-rr17/p4.html?hsid=3f7c92f3-a944-4d68-98c2-e1dba6089c38&utm\\_source=facebook](https://www.justice.gc.ca/eng/rp-pr/cj-ip/victim/rd17-rr17/p4.html?hsid=3f7c92f3-a944-4d68-98c2-e1dba6089c38&utm_source=facebook)

<sup>6</sup> Charlotte Barlow, Kelly Johnson, Sandra Walklate, and Les Humphreys.(2019). *Putting Coercive Control into Practice: Problems and Possibilities*. The British Journal of Criminology, July. <https://doi.org/10.1093/bjc/azz041>.

<sup>7</sup> Jane Wangmann. 2022. Law Reform Processes and Criminalising Coercive Control, Australian Feminist Law Journal, vol. 48, no. 1, 57–86, <http://doi.org/10.1080/13200968.2022.2138186>.

<sup>8</sup> Viji Sundaram (August 1, 2022). *What I learned reporting on the failures of California’s coercive control law*. USC Center for Health Journalism. Retrieved on May 29, 2024: <https://centerforhealthjournalism.org/our-work/insights/what-i-learned-reporting-failures-californias-coercive-control-law>

<sup>9</sup> Canadian Centre to End Human Trafficking (2022). *Digital Evidence Roundtable*. Unpublished report.



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In March 2021, the Queensland government in Australia set up a taskforce to investigate how to effectively legislate against coercive control. After extensive research and engagement, it found that there was a role for a new coercive control offence, but “that significant change needed to take place within and across the criminal legal system, not only to ensure the new offence operates as intended, but more importantly for the criminal legal system generally to become more responsive to [intimate partner violence].”<sup>10</sup>

The Taskforce released 89 recommendations, including a call for the establishment of an independent commission of inquiry to examine policing culture, practices and training relating to intimate partner violence and to achieve better outcomes for survivors.<sup>11</sup> They concluded that creating new offences without systemic change would place an “unacceptable risk of unintended consequences” onto victims, including First Nations peoples.<sup>12</sup>

### 2. Invest in training and education for judges and law enforcement

Training and education are important tools in supporting survivors who use the justice system. When the Government of Scotland introduced its coercive control legislation, funding was set aside to train judges<sup>13</sup> and law enforcement.<sup>14</sup> Approximately 14,000 police officers have received training on coercive control to date.<sup>15</sup>

Additionally, raising the general public’s awareness of coercive control will be essential. A successful communication strategy could be directed at higher risk communities and share information on how survivors can access help and the services available to them.

### 3. Invest in tools and training to better collect digital evidence

Unfortunately, Canadian law enforcement and prosecutors do not have the time nor expertise to make sense of large data files essential for convictions. “The wide range of data types and formats can make the [data collection] process challenging. It’s hard to understand the interconnectivity of it all and what pieces of evidence hold answers.”<sup>16</sup> Making analysis and curation of disparate data sets will be critical. To make this evidence usable in court, investigators need “a way to search and visualize this data with the same ease they would a Google search.”<sup>17</sup> Giving authorities the ability to compel the accused to unlock their phones should also be considered.

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<sup>10</sup>Wangmann, p. 82.

<sup>11</sup> Women’s Safety and Justice Taskforce (2021). *Hear Her Voice: Report One: Addressing Coercive Control and Domestic and Family Violence in Queensland*. The report was published in three volumes.

<sup>12</sup> Ibid.

<sup>13</sup> Law Society of Scotland (2023). *Judges to be trained ahead of new domestic abuse law*. Retrieved on June 3, 2024:

<https://www.lawsocot.org.uk/news-and-events/legal-news/judges-to-be-trained-ahead-of-new-domestic-abuse-law/>

<sup>14</sup> Scottish Government. (December 28, 2017). *Police prepare for new domestic abuse crime*. Retrieved on June 5, 2024.

<https://www.gov.scot/news/police-prepare-for-new-domestic-abuse-crime/>

<sup>15</sup> ; [https://safelives.org.uk/DA\\_Matters\\_Scotland](https://safelives.org.uk/DA_Matters_Scotland)

<sup>16</sup> SafeLives. (2024). *Domestic Abuse Matters Scotland*. Retrieved on June 3, 2024: <https://news.mit.edu/2021/turning-technology-against-human-traffickers-0506>

<sup>17</sup> Ibid.



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### ABOUT “THE CENTRE”

Founded in 2016, The Canadian Centre to End Human Trafficking (The Centre) is a national charity dedicated to ending all types of human trafficking in Canada. We work to mobilize system change by collaborating and working with various stakeholders, including survivors, all levels of government, frontline service providers, and private sector businesses to advance best practices. The Centre supports the anti-human trafficking movement through education and awareness, policy development and advocacy, research and data collection, convening and knowledge transfer.

In May 2019, The Centre launched the Canadian Human Trafficking Hotline (the Hotline), providing a confidential, multilingual service, operating 24/7 to connect victims and survivors with immediate and localized support, including social services and/or law enforcement if they so choose, as well as receive third-party tips from the public.

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